

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ZONING LAWS; PROVIDING FOR
5 PLANNING BOARDS FOR UNINCORPORATED AREAS; REVISING ZONING LAWS FOR AGRICULTURAL
6 AND TIMBER LANDS; DESCRIBING PERMISSIBLE GOALS FOR ZONING; REVISING COVENANT LAWS;
7 REVISING CRITERIA FOR GROWTH POLICIES, REQUIRING ADOPTION OF NEW GROWTH POLICIES;
8 REVISING CRITERIA FOR ZONING REGULATIONS; REQUIRING REZONING; REVISING PROCEDURE
9 FOR ADOPTION OF REGULATIONS AND BOUNDARIES; REQUIRING BOARDS OF ADJUSTMENT TO
10 CONSIDER ADDITIONAL CRITERIA; REVISING LAWS REGARDING BOARDS OF ADJUSTMENT;
11 REVISING VARIANCE LAW; REVISING SUBDIVISION REGULATION LAWS; PROVIDING DEFINITIONS;
12 AMENDING SECTIONS 70-17-203, 76-1-102, 76-1-103, 76-1-601, 76-2-203, 76-2-205, 76-2-216, 76-2-221,
13 76-2-223, 76-2-226, 76-2-227, 76-3-501, 76-3-503, 76-3-504, 76-3-506, 76-3-511, 76-3-608, 76-3-621, 76-6-
14 103, AND 90-1-103, MCA; REPEALING SECTIONS 76-3-509 AND 76-6-102, MCA; AND PROVIDING AN
15 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Severability of joint or consolidated planning boards.** At the election
20 of a majority of voters in an unincorporated area via ballot initiative, residents of an unincorporated area may
21 elect to establish a planning board for unincorporated areas in that county under their exclusive control.

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23 NEW SECTION. **Section 2. Citizen members of unincorporated area planning board.** Members
24 of the unincorporated area planning board must be residents of the area.

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26 NEW SECTION. **Section 3. Restriction on zoning land used for agricultural or timber purposes.**
27 Contiguous parcels of land under common ownership, used for agricultural or timber purposes, and in excess of
28 160 acres may not be zoned for residential purposes without the consent of the landowner.

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2 NEW SECTION. **Section 4. Scope and priority.** (1) Zoning regulations may be derived from both
3 general goals and regulations as well as specific regulations that apply to a specific parcel and achieve a
4 tangible regulatory purpose.

5 (2) General goals, or regulations based on general goals, are goals and regulations that are either not
6 tangible, or directly relate to the property in question in a clear and readily ascertainable way.

7 (3) General goals or regulations may have as considerations, but not be limited to:

8 (a) open space;

9 (b) view sheds; and

10 (c) community character.

11 (4) Specific regulations include but are not limited to:

12 (a) lot size restrictions based on tangible considerations of water availability, services, and fire
13 mitigation;

14 (b) setback requirements;

15 (c) use restrictions; and

16 (d) ingress and egress requirements.

17 (5) A property owner's interest in the use and value of the property supersedes general goals when
18 considering a variance.

19 (6) A property owner's interest in the use and value of the property is subservient to a specific
20 regulation. A rebuttable presumption exists that a specific regulation is the least restrictive measure needed to
21 achieve a government interest that is based on best evidence as it applies to a parcel of land.

22 (7) A property owner may seek a variance if the owner can prove:

23 (a) the regulation of the property impairs the use or valuation of the property;

24 (b) a viable alternative approach based on best evidence exists that achieves substantially the same
25 effect as the regulation; or

26 (c) the regulation is not based on the best evidence and should be forgone.

27 (8) As used in this section, "substantial impairment" means an impairment of the use or value of the
28 property as judged by a reasonable person to be greater than de minimis.

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Section 5. Section 70-17-203, MCA, is amended to read:

"70-17-203. Covenants that run with land. (1) Except as provided in 70-1-522 and 70-17-212, every covenant contained in a grant of an estate in real property that is made for the direct benefit of the property or some part of the property then in existence runs with the land.

(2) Subsection (1) includes:

(a) covenants of warranty, for quiet enjoyment, or for further assurance on the part of the grantor and covenants for the payment of rent or of taxes or assessments upon the land on the part of a grantee;

(b) conservation easements pursuant to 76-6-209; and

~~(c) a dedication of open space as provided in 76-3-509; and~~

~~(d) (c)~~ wind easements pursuant to Title 70, chapter 17, part 4.

(3) A covenant for the addition of some new thing to real property or for the direct benefit of some part of the property not then in existence or annexed to the property, when contained in a grant of an estate in the property and made by the covenantor expressly for the covenantor's assigns or to the assigns of the covenantee, runs with the land so far as the assigns mentioned are concerned."

Section 6. Section 76-1-102, MCA, is amended to read:

"76-1-102. Purpose. (1) It is the object of this chapter to encourage local units of government to improve the present health, safety, convenience, and welfare of their citizens and to plan for the future development of their communities to the end that highway systems be carefully planned; that new community centers grow only with adequate highway, utility, health, educational, and recreational facilities; that the needs of agriculture, industry, and business be recognized in future growth; that residential areas provide healthy surroundings for family life; ~~and~~ that the growth of the community be commensurate with and promotive of the efficient and economical use of public funds; and that property rights and individual preferences for housing and land use are respected.

(2) In accomplishing this objective, it is the intent of this chapter that the planning board shall serve in an advisory capacity to presently established boards and officials."

1 **Section 7.** Section 76-1-103, MCA, is amended to read:

2 **"76-1-103. Definitions.** As used in this chapter, the following definitions apply:

3 ~~(1)~~ (1) "Best evidence" means evidence that possesses the best empirically based explanatory power,
4 the least bias, or provides the most compelling equitable argument.

5 ~~(4)~~ (2) "City" includes incorporated cities and towns.

6 ~~(2)~~ (3) "City council" means the chief legislative body of a city or incorporated town.

7 ~~(3)~~ (4) "Governing body" or "governing bodies" means the governing body of any governmental unit
8 represented on a planning board.

9 ~~(4)~~ (5) "Growth policy" means a comprehensive development plan, master plan, or comprehensive
10 plan that was adopted pursuant to this chapter before October 1, 1999, or a policy that was adopted pursuant to
11 this chapter on or after October 1, 1999.

12 ~~(5)~~ (6) "Land use management techniques and incentives" include but are not limited to zoning
13 regulations, subdivision regulations, and market incentives.

14 ~~(6)~~ (7) "Market incentives" may include but are not limited to an expedited subdivision review process
15 authorized by 76-3-609, reductions in parking requirements, and a sliding scale of development review fees.

16 ~~(7)~~ (8) "Mayor" means mayor of a city.

17 ~~(8)~~ (9) "Neighborhood plan" means a plan for a geographic area within the boundaries of the
18 jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

19 ~~(9)~~ (10) "Person" means any individual, firm, or corporation.

20 ~~(10)~~ (11) "Planning board" means a city planning board, a county planning board, or a joint city-county
21 planning board.

22 ~~(11)~~ (12) "Plat" means a subdivision of land into lots, streets, and areas, marked on a map or plan, and
23 includes replats or amended plats.

24 ~~(12)~~ (13) "Property rights" means the interest of an individual to use the individual's property to the highest
25 and best use provided it does not materially interfere with public health, safety, or welfare.

26 ~~(13)~~ (14) "Public place" means any tract owned by the state or its subdivisions.

27 ~~(14)~~ (15) "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

28 ~~(15)~~ (16) "Utility" means any facility used in rendering service that the public has a right to demand."

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2 **Section 8.** Section 76-1-601, MCA, is amended to read:

3 **"76-1-601. Growth policy -- contents.** (1) A growth policy may cover all or part of the jurisdictional

4 area.

5 (2) The extent to which a growth policy addresses the elements listed in subsection (3) is at the full

6 discretion of the governing body.

7 (3) A growth policy must include:

8 (a) community goals and objectives;

9 (b) maps and text describing an inventory of the existing characteristics and features of the

10 jurisdictional area, including:

11 (i) land uses;

12 (ii) population;

13 (iii) housing needs;

14 (iv) economic conditions;

15 (v) local services;

16 (vi) public facilities;

17 (vii) natural resources;

18 (viii) sand and gravel resources; ~~and~~

19 (ix) housing affordability;

20 (x) housing preferences;

21 (xi) the potential economic and social impact of land use regulations and growth patterns on various

22 types of businesses;

23 (xii) the potential impact of growth and land use regulations on property rights;

24 (xiii) an analysis of current lot sizes and their potential to be subdivided or developed;

25 (xiv) an analysis of economic impact on development of different density requirements in cities and

26 unincorporated areas;

27 (xv) a discussion of which regulatory approach will least interfere with property use and value while still

28 achieving necessary regulatory goals; and

- 1 ~~(ix)~~ (xvi) other characteristics and features proposed by the planning board and adopted by the
- 2 governing bodies;
- 3 (c) projected trends for the life of the growth policy for each of the following elements:
- 4 (i) land use;
- 5 (ii) population;
- 6 (iii) housing needs;
- 7 (iv) economic conditions;
- 8 (v) local services;
- 9 (vi) natural resources; and
- 10 (vii) other elements proposed by the planning board and adopted by the governing bodies;
- 11 (d) a description of policies, regulations, and other measures to be implemented in order to achieve
- 12 the goals and objectives established pursuant to subsection (3)(a);
- 13 (e) a strategy for development, maintenance, and replacement of public infrastructure, including
- 14 drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection
- 15 facilities, roads, and bridges;
- 16 (f) an implementation strategy that includes:
- 17 (i) a timetable for implementing the growth policy;
- 18 (ii) a list of conditions that will lead to a revision of the growth policy; and
- 19 (iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if
- 20 necessary;
- 21 (g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that
- 22 explains:
- 23 (i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the
- 24 county in which the city or town is located on matters related to the growth policy;
- 25 (ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities
- 26 and towns located within the county's boundaries on matters related to the growth policy;
- 27 (h) a statement explaining how the governing bodies will:
- 28 (i) define the criteria in 76-3-608(3)(a); and

- 1 (ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-
- 2 608(3)(a);
- 3 (i) a statement explaining how public hearings regarding proposed subdivisions will be conducted;
- 4 and
- 5 (j) an evaluation of the potential for fire and wildland fire in the jurisdictional area, including whether or
- 6 not there is a need to:
 - 7 ~~(i) delineate the wildland-urban interface; and~~
 - 8 ~~(ii) adopt regulations requiring:~~
 - 9 ~~(A) (i) defensible space around structures;~~
 - 10 ~~(B) (ii) adequate ingress and egress to and from structures and developments to facilitate fire~~
 - 11 ~~suppression activities; and~~
 - 12 ~~(C) (iii) adequate water supply for fire protection.~~
 - 13 (4) A growth policy may:
 - 14 (a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth
 - 15 policy.
 - 16 (b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;
 - 17 (c) establish an infrastructure plan that, at a minimum, includes:
 - 18 (i) projections, in maps and text, of the jurisdiction's growth in population and number of residential,
 - 19 commercial, and industrial units over the next 20 years;
 - 20 (ii) for a city, a determination regarding if and how much of the city's growth is likely to take place
 - 21 outside of the city's existing jurisdictional area over the next 20 years and a plan of how the city will coordinate
 - 22 infrastructure planning with the county or counties where growth is likely to take place;
 - 23 (iii) for a county, a plan of how the county will coordinate infrastructure planning with each of the cities
 - 24 that project growth outside of city boundaries and into the county's jurisdictional area over the next 20 years;
 - 25 (iv) for cities, a land use map showing where projected growth will be guided and at what densities
 - 26 within city boundaries;
 - 27 (v) for cities and counties, a land use map that designates infrastructure planning areas adjacent to
 - 28 cities showing where projected growth will be guided and at what densities;

1 (vi) using maps and text, a description of existing and future public facilities necessary to efficiently
2 serve projected development and densities within infrastructure planning areas, including, whenever feasible,
3 extending interconnected municipal street networks, sidewalks, trail systems, public transit facilities, and other
4 municipal public facilities throughout the infrastructure planning area. For the purposes of this subsection
5 (4)(c)(vi), public facilities include but are not limited to drinking water treatment and distribution facilities, sewer
6 systems, wastewater treatment facilities, solid waste disposal facilities, parks and open space, schools, public
7 access areas, roads, highways, bridges, and facilities for fire protection, law enforcement, and emergency
8 services;

9 (vii) a description of proposed land use management techniques and incentives that will be adopted to
10 promote development within cities and in an infrastructure planning area, including land use management
11 techniques and incentives that address issues of housing affordability;

12 (viii) a description of how and where projected development inside municipal boundaries for cities and
13 inside designated joint infrastructure planning areas for cities and counties could adversely impact:

14 (A) threatened or endangered wildlife and critical wildlife habitat and corridors;

15 (B) water available to agricultural water users and facilities;

16 (C) the ability of public facilities, including schools, to safely and efficiently service current residents
17 and future growth;

18 (D) a local government's ability to provide adequate local services, including but not limited to
19 emergency, fire, and police protection;

20 (E) the safety of people and property due to threats to public health and safety, including but not
21 limited to wildfire, flooding, erosion, water pollution, hazardous wildlife interactions, and traffic hazards;

22 (F) natural resources, including but not limited to forest lands, mineral resources, sand and gravel
23 resources, streams, rivers, lakes, wetlands, and ground water; and

24 (G) agricultural lands and agricultural production; and

25 (ix) a description of measures, including land use management techniques and incentives, that will be
26 adopted to avoid, significantly reduce, or mitigate the adverse impacts identified under subsection (4)(c)(viii).

27 (d) include any elements required by a federal land management agency in order for the governing
28 body to establish coordination or cooperating agency status as provided in 76-1-607.

1 (5) The planning board may propose and the governing bodies may adopt additional elements of a
2 growth policy in order to fulfill the purpose of this chapter.

3 (6) A growth plan adopted prior to [the effective date of this act] must be revised to incorporate the
4 requirements of this section by December 31, 2023."

5

6 **Section 9.** Section 76-2-203, MCA, is amended to read:

7 **"76-2-203. Criteria and guidelines for zoning regulations.** (1) Zoning regulations must be:

8 (a) made in accordance with the growth policy; and

9 (b) designed to:

10 (i) secure safety from fire and other dangers;

11 (ii) promote public health, public safety, and general welfare; ~~and~~

12 (iii) facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other
13 public requirements; ~~;~~ and

14 (iv) allow property owners to use and enhance the value of their property with no more interference
15 than necessary while still contemplating the public good.

16 (2) In the adoption of zoning regulations, the board of county commissioners shall consider:

17 (a) reasonable provision of adequate light and air;

18 (b) the effect on motorized and nonmotorized transportation systems;

19 (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the
20 areas around municipalities;

21 (d) the character of the district and its peculiar suitability for particular uses; ~~and~~

22 (e) conserving the value and use of buildings and land and encouraging the most appropriate use of
23 land throughout the jurisdictional area; ~~;~~

24 ~~(3) Zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of~~
25 ~~nearby municipalities.~~

26 (f) the property rights and the impact of zoning regulations on property values and use;

27 (g) the broad social, economic, and environmental impact of specific zoning and land use regulations;

28 and

1 (h) the regulatory burden of land use and zoning regulations on property use and values as well as
2 business activities.

3 (3) Zoning regulations adopted prior to [the effective date of this act] must be revised to incorporate
4 the requirements of this section by December 31, 2023."

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6 **Section 10.** Section 76-2-205, MCA, is amended to read:

7 **"76-2-205. Procedure for adoption of regulations and boundaries.** The board of county
8 commissioners;

9 (1) shall conduct a detailed social, economic, and environmental analysis of the impact of the
10 proposed zoning;

11 (2) shall send a survey to each resident of the proposed zoned area about the support for material
12 features of the proposed plan, including but not limited to:

13 (a) lot sizes;

14 (b) use restrictions;

15 (c) building restriction;

16 (d) other material restrictions;

17 (e) a map of proposed zoned areas; and

18 (f) broad input relating to social, economic, and environmental considerations; and

19 (3) shall observe the following procedures in the establishment or revision of boundaries for zoning
20 districts and in the adoption or amendment of zoning regulations:

21 ~~(1)~~ (a) Notice of a public hearing on the proposed zoning district boundaries and of regulations for
22 the zoning district must:

23 ~~(i)~~ (i) state:

24 ~~(i)~~ (A) the boundaries of the proposed district;

25 ~~(ii)~~ (B) the general character of the proposed zoning regulations;

26 ~~(iii)~~ (C) the time and place of the public hearing; and

27 ~~(iv)~~ (D) that the proposed zoning regulations are on file for public inspection at the office of the county
28 clerk and recorder;

1 ~~(b)~~ (ii) be posted not less than 45 days before the public hearing in at least five public places,
 2 including but not limited to public buildings and adjacent to public rights-of-way, within the proposed district; ~~and~~
 3 ~~(c)~~ (iii) be published once a week for 2 weeks in a newspaper of general circulation within the county;
 4 (iv) give actual notice of the proposed changes to each property owner by registered mail; and
 5 (v) include a clear summary of proposed changes and reference to the complete proposed plan as
 6 made available on website or by document made freely available to the general public.

7 ~~(2)~~ (b) At the public hearing, the board of county commissioners shall give the public an opportunity to
 8 be heard regarding the proposed zoning district and regulations.

9 ~~(3)~~ (c) After the public hearing, the board of county commissioners shall review the proposals of the
 10 planning board and shall make any revisions or amendments that it determines to be proper.

11 ~~(4)~~ (d) The board of county commissioners may pass a resolution of intention to create a zoning
 12 district and to adopt zoning regulations for the district.

13 ~~(5)~~ (e) The board of county commissioners shall publish notice of passage of the resolution of
 14 intention once a week for 2 weeks in a newspaper of general circulation within the county. The notice must
 15 state:

16 ~~(a)~~ (i) the boundaries of the proposed district;

17 ~~(b)~~ (ii) the general character of the proposed zoning regulations;

18 ~~(c)~~ (iii) that the proposed zoning regulations are on file for public inspection at the office of the county
 19 clerk and recorder; and

20 ~~(d)~~ (iv) that for 30 days after first publication of this notice, the board of county commissioners will
 21 receive written protests to the creation of the zoning district or to the zoning regulations from persons owning
 22 real property within the district whose names appear on the last-completed assessment roll of the county.

23 ~~(6)~~ (f) Within 30 days after the expiration of the protest period, the board of county commissioners
 24 may in its discretion adopt the resolution creating the zoning district or establishing the zoning regulations for
 25 the district. However, if real property owners representing 30% of the titled property ownership by acreage, 40%
 26 of the real property owners within the district whose names appear on the last-completed assessment roll, or if
 27 real property owners representing 50% of the titled property ownership whose property is taxed for agricultural
 28 purposes under 15-7-202 or whose property is taxed as forest land under Title 15, chapter 44, part 1, have

1 protested the establishment of the district or adoption of the regulations as inordinately interfering with their
2 property rights, the board of county commissioners may not adopt the resolution and a further zoning resolution
3 may not be proposed for the district for a period of 1 year, except by a two-thirds vote of the commission.

4 (g) At the election of 15% of registered voters, a referendum may be held to revoke one or more parts
5 of the adopted plan."

6

7 **Section 11.** Section 76-2-216, MCA, is amended to read:

8 **"76-2-216. Wholly surrounded county property -- change of use -- hearing.** (1) If a county parcel
9 for which zoning regulations have been adopted is wholly surrounded by municipal property and a change of an
10 allowed use in the county zoning district occurs, the county governing body shall notify the municipality and all
11 owners of municipal property within 300 feet of the county property of the change of use.

12 (2) Upon request of either the municipality or at least 10% of the property owners in the municipality
13 who have received the notice, the county governing body shall hold a hearing on the change of use.

14 (3) If the county governing body determines, based on testimony provided at the hearing, that the
15 regulations in the county district are no longer as compatible as possible with the municipal zoning ordinances
16 ~~as provided in 76-2-203(3)~~, the county governing body may initiate a revision to the zoning district or
17 amendments to the regulations as provided in this part."

18

19 **Section 12.** Section 76-2-221, MCA, is amended to read:

20 **"76-2-221. Board of adjustment.** (1) The board of county commissioners shall provide for the
21 appointment of a board of adjustment and in the regulations and restrictions adopted pursuant to the authority
22 of this part shall provide that the board of adjustment may, in appropriate cases and subject to appropriate
23 conditions and safeguards, make special exceptions to the terms of the zoning resolution in harmony with its
24 general purposes and intent and in accordance with the general or specific rules of this part.

25 (2) The board of adjustment shall adopt rules in accordance with the provisions of any resolution
26 adopted pursuant to this part. Meetings of the board of adjustment must be held at the call of the presiding
27 officer and at times that the board may determine. The presiding officer or in the presiding officer's absence the
28 acting presiding officer may administer oaths and compel the attendance of witnesses.

1 (3) The board of adjustment shall consider the broader social, economic, and environmental impact of
2 regulation in their deliberations.

3 (4) The board of adjustment shall consider viable alternatives and best evidence presented by
4 property owners whose use or property value has been substantially impaired by regulation."

5

6 **Section 13.** Section 76-2-223, MCA, is amended to read:

7 **"76-2-223. Powers of board of adjustment.** (1) The board of adjustment shall have the following
8 powers:

9 (a) to hear and decide appeals ~~where~~ when it is alleged there is error in any order, requirement,
10 decision, or determination made by an administrative official in the enforcement of this part or of any resolution
11 adopted pursuant ~~thereto~~ to this part;

12 (b) to hear and decide special exceptions to the terms of the zoning resolution upon which ~~said~~ the
13 board is required to pass under ~~such~~ the resolution;

14 (c) to authorize upon appeal in specific cases ~~such a~~ a variance from the terms of the resolution as will
15 not be contrary to the public interest and ~~where~~ in which, owing to special conditions, a literal enforcement of
16 the provisions of the resolution will result in unnecessary hardship and so that the spirit of the resolution ~~shall~~
17 must be observed and substantial justice done- ; and

18 (d) to hear petitions for variance from property owners whose property is substantially hindered in use
19 and value and who can provide best evidence as to a less restrictive approach that achieves substantially the
20 same effect while reducing the hindrance to use and value of the property.

21 (2) In exercising the above-mentioned powers, the board of adjustment may, in conformity with the
22 provisions of this part, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or
23 determination appealed from and may make ~~such~~ the order, requirement, decision, or determination as ought to
24 be made and to that end shall have all the powers of the officer from whom the appeal is taken."

25

26 **Section 14.** Section 76-2-226, MCA, is amended to read:

27 **"76-2-226. Appeals to board of adjustment.** (1) Appeals to the board of adjustment may be taken
28 by any person or persons, jointly or severally, aggrieved by a decision of the administrative officer or by an

1 officer, department, board, or bureau of the county affected by any decision of the administrative officer. The
2 appeal must be taken within a reasonable time, as provided by the rules of the board, by filing with the officer
3 from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds of
4 the appeal.

5 (2) The officer from whom the appeal is taken shall transmit to the board in a timely manner all papers
6 constituting the record upon which the action appealed was taken.

7 (3) An appeal stays all proceedings in furtherance of the action appealed from unless the officer from
8 whom the appeal is taken certifies to the board of adjustment after the notice of appeal has been filed with the
9 officer that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril
10 to life or property. In that case, proceedings may not be stayed except by a restraining order, which may be
11 granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the
12 appeal is taken, and on due cause shown.

13 (4) The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public
14 notice of the hearing as well as due notice to the parties in interest, and decide the appeal within a reasonable
15 time.

16 (5) At the hearing, a party may appear in person or by the party's attorney.

17 (6) Decisions of the board of adjustment must be based on the criteria provided in [section 4]."

18

19 **Section 15.** Section 76-2-227, MCA, is amended to read:

20 **"76-2-227. Appeals -- board of county commissioners or board of adjustment to court of record**

21 **-- county commissioners may establish appeal process.** (1) (a) The board of county commissioners may
22 establish in the zoning regulations a process for an appeal of a decision by the board of adjustment to the
23 board of county commissioners by any person or persons, jointly or severally, aggrieved by a decision of the
24 board of adjustment or an officer, department, board, or bureau of the county.

25 (b) The process, if established, must provide that an appeal to the board of county commissioners be
26 initiated by presenting to the board of county commissioners a petition, ~~duly~~ verified accordingly, setting forth
27 that the decision is illegal, in whole or in part, and specifying the grounds of the illegality.

28 (c) The petition must be presented to the board of county commissioners within 30 days after the filing

1 of the decision of the board of adjustment, and a final decision must be made within 60 days of receipt of the
 2 petition.

3 (d) The board of county commissioners may:

4 (i) remand the special exception to the board of adjustment;

5 (ii) reverse or affirm, wholly or partly, the decision of the board of adjustment; or

6 (iii) modify the decision of the board of adjustment.

7 (2) Any person or persons, jointly or severally, aggrieved by a decision of the board of county
 8 commissioners or the board of adjustment may present to a court of record a petition, ~~duly verified~~ accordingly,
 9 setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. The
 10 petition must be presented to the court within 30 days after the filing of the decision in the office of the
 11 appropriate board.

12 (3) Upon presentation of a petition, the court may allow a writ of certiorari directed to the board of
 13 county commissioners or the board of adjustment to review the decision of the board and shall prescribe in the
 14 writ the time within which a return must be made and served upon the relator's attorney, which may not be less
 15 than 10 days and may be extended by the court. The allowance of the writ may not stay proceedings upon the
 16 decision appealed from, but the court may, upon application, on notice to the board of county commissioners or
 17 the board of adjustment, and on due cause shown, grant a restraining order. The board of county
 18 commissioners or the board of adjustment may not be required to return the original papers acted upon by it,
 19 but it is sufficient to return certified or sworn copies of the original papers or of portions of the original papers
 20 that may be called for by the writ. The return must concisely set forth other facts that may be pertinent and
 21 material to show the grounds of the decision appealed from and must be verified.

22 (4) If, upon the hearing, it appears to the court that testimony is necessary for the proper disposition
 23 of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the
 24 evidence to the court with the referee's findings of fact and conclusions of law, which constitute a part of the
 25 proceedings upon which the determination of the court must be made.

26 (5) The court may reverse or affirm, wholly or partly, or may modify the decision brought up for
 27 review.

28 (6) On the issuance of a variance based on the substantial impairment of use or value of the property,

1 the alternative accepted in the place of original rule must have the same effect in compliance as the original
2 rule.

3 (7) When established, the accepted alternative from one petition must automatically constitute
4 compliance of other property owners with regard to that rule.

5 (8) The county has the burden of showing that the alternative is not applicable in subsequent cases."

6

7 **Section 16.** Section 76-3-501, MCA, is amended to read:

8 **"76-3-501. Local subdivision regulations.** (1) The governing body of every county, city, and town
9 shall adopt and provide for the enforcement and administration of subdivision regulations reasonably providing
10 for:

- 11 (4) (a) the orderly development of their jurisdictional areas;
- 12 (2) (b) the coordination of roads within subdivided land with other roads, both existing and planned;
- 13 (3) (c) the dedication of land for roadways and for public utility easements;
- 14 (4) (d) the improvement of roads;
- 15 (5) (e) the provision of adequate open spaces for travel, light, air, and recreation;
- 16 (6) (f) the provision of adequate transportation, water, and drainage;
- 17 (7) (g) subject to the provisions of 76-3-511, the regulation of sanitary facilities;
- 18 (8) (h) the avoidance or minimization of congestion; and
- 19 (9) (i) the avoidance of subdivisions that would involve unnecessary environmental degradation and

20 danger of injury to health, safety, or welfare by reason of natural hazard, including but not limited to fire and
21 wildland fire, or the lack of water, drainage, access, transportation, or other public services or that would
22 necessitate an excessive expenditure of public funds for the supply of the services.

23 (2) Regulations of subdivisions must use the best evidence available and create a rebuttable
24 presumption that regulations are based on the best evidence."

25

26 **Section 17.** Section 76-3-503, MCA, is amended to read:

27 **"76-3-503. Hearing on proposed regulations.** (1) Before the governing body adopts subdivision
28 regulations pursuant to 76-3-501 ~~or 76-3-509~~, it shall hold a public hearing on the regulations and shall give

1 public notice of its intent to adopt the regulations and of the public hearing by publication of notice of the time
2 and place of the hearing in a newspaper of general circulation in the county not less than 15 or more than 30
3 days prior to the date of the hearing.

4 (2) Any resident of a jurisdiction pursuing subdivision regulations must be given notice by registered
5 mail with a summary of the proposed regulations in addition to a reference to where the detailed proposal may
6 be found either physically or on a website administered by the government entity."

7

8 **Section 18.** Section 76-3-504, MCA, is amended to read:

9 **"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this
10 chapter must, at a minimum:

11 (a) list the materials that must be included in a subdivision application in order for the application to be
12 determined to contain the required elements for the purposes of the review required in 76-3-604(1);

13 (b) except as provided in ~~76-3-509~~, 76-3-609, or 76-3-616, require the subdivider to submit to the
14 governing body an environmental assessment as prescribed in 76-3-603;

15 (c) establish procedures consistent with this chapter for the submission and review of subdivision
16 applications and amended applications;

17 (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

18 (e) provide for the identification of areas that, because of natural or human-caused hazards, are
19 unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the
20 hazards can be eliminated or overcome by approved construction techniques or other mitigation measures
21 authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not
22 include building regulations as defined in 50-60-101 other than those identified by the department of labor and
23 industry as provided in 50-60-901.

24 (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-
25 year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

26 (g) prescribe standards for:

27 (i) the design and arrangement of lots, streets, and roads;

28 (ii) grading and drainage;

1 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet
2 the:

3 (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions
4 that will create one or more parcels containing less than 20 acres; and

5 (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels
6 containing 20 acres or more and less than 160 acres; and

7 (iv) the location and installation of public utilities;

8 (h) provide procedures for the administration of the park and open-space requirements of this
9 chapter;

10 (i) provide for the review of subdivision applications by affected public utilities and those agencies of
11 local, state, and federal government identified during the preapplication consultation conducted pursuant to
12 subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency
13 review may not delay the governing body's action on the application beyond the time limits specified in this
14 chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of
15 the application by the governing body.

16 (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the
17 subdivider to:

18 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be
19 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have
20 a legal right to the water and reserve and sever any remaining surface water rights from the land;

21 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to
22 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement
23 administered through a single entity that specifies administration and the rights and responsibilities of
24 landowners within the subdivision who have a legal right and access to the water; or

25 (iii) reserve and sever all surface water rights from the land;

26 (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements
27 in the subdivision that:

28 (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical

1 placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for
2 irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an
3 irrigation district or other private or public entity formed to provide for the use of the water right on the
4 subdivision lots;

5 (B) are a sufficient distance from the centerline of the ditch to allow for construction, repair,
6 maintenance, and inspection of the ditch; and

7 (C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch
8 easement without the written permission of the ditch owner.

9 (ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

10 (A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner
11 acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated
12 land and may continue to be assessed for irrigation water delivery even though the water may not be
13 deliverable; or

14 (B) the water rights are removed or the process has been initiated to remove the water rights from the
15 subdivided land through an appropriate legal or administrative process and if the removal or intended removal
16 is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the
17 subdivider shall provide written notification to prospective buyers of the intent to remove the water right and
18 shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

19 (l) require the subdivider, unless otherwise provided for under separate written agreement or filed
20 easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery
21 ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to
22 lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with
23 historic and legal rights;

24 (m) require the subdivider to describe, dimension, and show public utility easements in the
25 subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient
26 width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of
27 public utility services within the subdivision.

28 (n) establish whether the governing body, its authorized agent or agency, or both will hold public

1 hearings;

2 (o) establish procedures describing how the governing body or its agent or agency will address
3 information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

4 (p) establish criteria that the governing body or reviewing authority will use to determine whether a
5 proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade
6 the requirements of this chapter. The regulations must provide for an appeals process to the governing body if
7 the reviewing authority is not the governing body.

8 (q) establish a preapplication process that:

9 (i) requires a subdivider to meet with the authorized agent or agency, other than the governing body,
10 that is designated by the governing body to review subdivision applications prior to the subdivider submitting
11 the application;

12 (ii) requires, for informational purposes only, identification of the state laws, local regulations, and
13 growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

14 (iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local,
15 state, and federal government, and any other entities that may be contacted for comment on the subdivision
16 application and the timeframes that the public utilities, agencies, and other entities are given to respond. If,
17 during the review of the application, the agent or agency designated by the governing body contacts a public
18 utility, agency, or other entity that was not included on the list originally made available to the subdivider, the
19 agent or agency shall notify the subdivider of the contact and the timeframe for response.

20 (iv) requires that a preapplication meeting take place no more than 30 days from the date that the
21 authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

22 (v) establishes a time limit after a preapplication meeting by which an application must be submitted;

23 (r) require that the written decision required by 76-3-620 must be provided to the applicant within 30
24 working days following a decision by the governing body to approve, conditionally approve, or deny a
25 subdivision;

26 (s) establish criteria for reviewing an area, regardless of its size, that provides or will provide multiple
27 spaces for recreational camping vehicles or mobile homes.

28 (2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted

1 under ~~76-3-509~~ and this section may include provisions that are consistent with this section that promote cluster
2 development."

3

4 **Section 19.** Section 76-3-506, MCA, is amended to read:

5 **"76-3-506. Provision for granting variances.** (1) Subdivision regulations may authorize the
6 governing body, after a public hearing on the variance request before the governing body or its designated
7 agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship or
8 a substantial impairment in use and value of the property and when it is not essential to the public welfare.

9 (2) Any variance granted pursuant to this section must be based on specific variance criteria
10 contained in the subdivision regulations.

11 (3) A minor subdivision as provided for in 76-3-609(2) is not subject to the public hearing requirement
12 of this section.

13 (4) A governing body's decisions on variances must be based on [section 4]."

14

15 **Section 20.** Section 76-3-511, MCA, is amended to read:

16 **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except
17 as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a
18 regulation under 76-3-501 or 76-3-504(1)(g)(iii) that is more stringent than the comparable state regulations or
19 guidelines that address the same circumstances. The governing body may incorporate by reference
20 comparable state regulations or guidelines.

21 (2) The governing body may adopt a regulation to implement 76-3-501 or 76-3-504(1)(g)(iii) that is
22 more stringent than comparable state regulations or guidelines only if the governing body makes a written
23 finding, after a public hearing and public comment and based on evidence in the record, that:

24 (a) the proposed local standard or requirement protects public health or the environment; and

25 (b) the local standard or requirement to be imposed can mitigate harm to the public health or
26 environment and is achievable under current technology.

27 (3) The written finding must reference information and peer-reviewed scientific studies and other valid
28 scientific analysis that provides the best evidence of the specific and broad impacts contained in the record that

1 forms the basis for the governing body's conclusion. The conclusion must be based on the best evidence
 2 available and create a rebuttable presumption that the evidence used is the best evidence for the regulation.

3 The written finding must also include information from the hearing record regarding the costs to the regulated
 4 community that are directly attributable to the proposed local standard or requirement.

5 (4) (a) A person affected by a regulation of the governing body adopted after January 1, 1990, and
 6 before April 14, 1995, that that person believes to be more stringent than comparable state regulations or
 7 guidelines may petition the governing body to review the regulation. If the governing body determines that the
 8 regulation is more stringent than comparable state regulations or guidelines, the governing body shall comply
 9 with this section by either revising the regulation to conform to the state regulations or guidelines or by making
 10 the written finding, as provided under subsection (2), within a reasonable period of time, not to exceed 12
 11 months after receiving the petition. A petition under this section does not relieve the petitioner of the duty to
 12 comply with the challenged regulation. The governing body may charge a petition filing fee in an amount not to
 13 exceed \$250.

14 (b) A person may also petition the governing body for a regulation review under subsection (4)(a) if
 15 the governing body adopts a regulation after January 1, 1990, in an area in which no state regulations or
 16 guidelines existed and the state government subsequently establishes comparable regulations or guidelines
 17 that are less stringent than the previously adopted governing body regulation."
 18

19 **Section 21.** Section 76-3-608, MCA, is amended to read:

20 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to
 21 approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application,
 22 preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or
 23 additional information demonstrates that development of the proposed subdivision meets the requirements of
 24 this chapter. A governing body may not deny approval of a proposed subdivision based solely on the
 25 subdivision's impacts on educational services or based solely on parcels within the subdivision having been
 26 designated as wildland-urban interface parcels under 76-13-145.

27 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as
 28 applicable.

1 (3) A subdivision proposal must undergo review for the following primary criteria:

2 (a) except when the governing body has established an exemption pursuant to subsection (6) of this
3 section or except as provided in ~~76-3-509~~, 76-3-609(2) or (4), or 76-3-616, the impact on agriculture,
4 agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public
5 health and safety;

6 (b) compliance with:

7 (i) the survey requirements provided for in part 4 of this chapter;

8 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

9 (iii) the local subdivision review procedure provided for in this part;

10 (c) the provision of easements within and to the proposed subdivision for the location and installation
11 of any planned utilities; and

12 (d) the provision of legal and physical access to each parcel within the proposed subdivision and the
13 required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

14 (4) The governing body may require the subdivider to design the proposed subdivision to reasonably
15 minimize potentially significant adverse impacts identified through the review required under subsection (3).
16 The governing body shall issue written findings to justify the reasonable mitigation required under this
17 subsection (4).

18 (5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under
19 subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is
20 recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable
21 and will preclude approval of the subdivision.

22 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider
23 and shall give due weight and consideration to the expressed preference of the subdivider.

24 (6) A governing body may conditionally approve or deny a proposed subdivision as a result of the
25 water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-
26 604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on
27 existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.

28 (7) A governing body may not require as a condition of subdivision approval that a property owner

1 waive a right to protest the creation of a special improvement district or a rural improvement district for capital
 2 improvement projects that does not identify the specific capital improvements for which protest is being waived.
 3 A waiver of a right to protest may not be valid for a time period longer than 20 years after the date that the final
 4 subdivision plat is filed with the county clerk and recorder.

5 (8) A governing body may not approve a proposed subdivision if any of the features and
 6 improvements of the subdivision encroach onto adjoining private property in a manner that is not otherwise
 7 provided for under chapter 4 or this chapter or if the well isolation zone of any proposed well to be drilled for the
 8 proposed subdivision encroaches onto adjoining private property unless the owner of the private property
 9 authorizes the encroachment. For the purposes of this section, "well isolation zone" has the meaning provided
 10 in 76-4-102.

11 (9) If a federal or state governmental entity submits a written or oral comment or an opinion regarding
 12 wildlife, wildlife habitat, or the natural environment relating to a subdivision application for the purpose of
 13 assisting a governing body's review, the comment or opinion may be included in the governing body's written
 14 statement under 76-3-620 only if the comment or opinion provides scientific information or a published study
 15 that supports the comment or opinion. A governmental entity that is or has been involved in an effort to acquire
 16 or assist others in acquiring an interest in the real property identified in the subdivision application shall disclose
 17 that the entity has been involved in that effort prior to submitting a comment, an opinion, or information as
 18 provided in this subsection.

19 (10) Findings of fact by the governing body concerning whether the development of the proposed
 20 subdivision meets the requirements of this chapter must be based on the record as a whole. The governing
 21 body's findings of fact must be sustained unless they are arbitrary, capricious, or unlawful."
 22

23 **Section 22.** Section 76-3-621, MCA, is amended to read:

24 "**76-3-621. Park dedication requirement.** (1) Except as provided in ~~76-3-509~~ subsections (2), (3),
 25 and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation
 26 equal to:

- 27 (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- 28 (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and

1 not larger than 1 acre;

2 (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger
3 than 3 acres; and

4 (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not
5 larger than 5 acres.

6 (2) When a subdivision is located totally within an area for which density requirements have been
7 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the
8 governing body may establish park dedication requirements based on the community need for parks and the
9 development densities identified in the growth policy or regulations. Park dedication requirements established
10 under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per
11 dwelling unit.

12 (3) A park dedication may not be required for:

13 (a) land proposed for subdivision into parcels larger than 5 acres;

14 (b) subdivision into parcels that are all nonresidential;

15 (c) a subdivision in which parcels are not created, except when that subdivision provides permanent
16 multiple spaces for recreational camping vehicles, mobile homes, or condominiums;

17 (d) a subdivision in which only one additional parcel is created; or

18 (e) except as provided in subsection (8), a first minor subdivision from a tract of record as described
19 in 76-3-609(2).

20 (4) The governing body, in consultation with the subdivider and the planning board or park board that
21 has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and
22 consideration to the expressed preference of the subdivider, may determine whether the park dedication must
23 be a land donation, cash donation, or a combination of both. When a combination of land donation and cash
24 donation is required, the cash donation may not exceed the proportional amount not covered by the land
25 donation.

26 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall
27 use the dedicated money or land for development, acquisition, or maintenance of parks to serve the
28 subdivision.

1 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its
2 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements
3 only if:

4 (i) the park, recreational area, open space, or conservation easement is within a reasonably close
5 proximity to the proposed subdivision; and

6 (ii) the governing body has formally adopted a park plan that establishes the needs and procedures for
7 use of the money.

8 (c) The governing body may not use more than 50% of the dedicated money for park maintenance.

9 (6) The local governing body shall waive the park dedication requirement if:

10 (a) (i) the preliminary plat provides for a planned unit development or other development with land
11 permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will
12 ultimately reside in the development; and

13 (ii) the area of the land and any improvements set aside for park and recreational purposes equals or
14 exceeds the area of the dedication required under subsection (1);

15 (b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical,
16 or natural resources; agricultural interests; or aesthetic values; and

17 (ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided
18 for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required
19 under subsection (1);

20 (c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of
21 subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication
22 required under subsection (1); or

23 (d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and
24 recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

25 (ii) the area of the land and any improvements set aside for park and recreational uses equals or
26 exceeds the area of dedication required under subsection (1).

27 (7) The local governing body may waive the park dedication requirement if:

28 (a) the subdivider provides land outside the subdivision that affords long-term protection of critical

1 wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

2 (b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals
3 or exceeds the area of the dedication required under subsection (1).

4 (8) (a) A local governing body may, at its discretion, require a park dedication for:

5 (i) a subsequent minor subdivision as described in 76-3-609(3); or

6 (ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

7 (A) the subdivision plat indicates development of condominiums or other multifamily housing;

8 (B) zoning regulations permit condominiums or other multifamily housing; or

9 (C) any of the lots are located within the boundaries of a municipality.

10 (b) A local governing body that chooses to require a park dedication shall specify in regulations the
11 circumstances under which a park dedication will be required.

12 (9) Subject to the approval of the local governing body and acceptance by the school district trustees,
13 a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used
14 for school facilities or buildings.

15 (10) For the purposes of this section:

16 (a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

17 (b) "dwelling unit" means a residential structure in which a person or persons reside.

18 (11) A land donation under this section may be inside or outside of the subdivision."
19

20 **Section 23.** Section 76-6-103, MCA, is amended to read:

21 **"76-6-103. Purposes.** ~~In accordance with the findings in 76-6-102, the~~ The legislature states that the
22 purposes of this chapter are to:

23 (1) authorize and enable public bodies and certain qualifying private organizations voluntarily to
24 provide for the preservation of native plants or animals, biotic communities, or geological or geographical
25 formations of scientific, aesthetic, or educational interest;

26 (2) provide for the preservation of other significant open-space land anywhere in the state either in
27 perpetuity or for a term of years; and

28 (3) encourage private participation in ~~such~~ a program by establishing the policy to be utilized in

1 determining the property tax to be levied upon the real property which is subject to the provisions of this
2 chapter."

3

4 **Section 24.** Section 90-1-103, MCA, is amended to read:

5 **"90-1-103. Functions of department of commerce -- community development.** (1) The
6 department of commerce shall:

7 (a) cooperate with and provide technical assistance to county, municipal, state, and regional planning
8 commissions, zoning commissions, parks or recreation boards, community development groups, community
9 action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive,
10 and coordinated development of the communities of the state;

11 (b) assist the governor in coordinating the activities of state agencies that have an impact on solution
12 of community development problems and implementation of community plans;

13 (c) serve as a clearinghouse for information, data, and other materials that may be helpful or
14 necessary to local governments to discharge their responsibilities and provide information on available federal
15 and state financial and technical assistance;

16 (d) carry out continuing studies and analyses of the problems faced by communities within the state
17 and develop those recommendations for administrative or legislative action as appear necessary. In carrying
18 out the studies and analyses and in providing technical assistance to communities, the department shall pay
19 particular attention to the planning and financing of public facilities and to the problems of metropolitan,
20 suburban, and other areas in which economic and population factors are rapidly changing.

21 (e) administer the federal community development block grant program and adopt rules to implement
22 the program.

23 (2) In partial fulfillment of its duties under subsection (1), by January 1, 2003, the department shall
24 have developed and published examples of subdivision regulations that provide incentives for and remove
25 disincentives to cluster development. The examples ~~need not be limited to the local option cluster development~~
26 ~~regulations authorized in 76-3-509 and~~ may include any cluster development regulations that are authorized
27 under Title 76, chapter 3. In developing the examples of regulations, the department shall seek the advice of
28 interested parties. The department shall provide technical assistance to local governments that are developing

1 cluster development regulations, as provided in subsection (1)(a)."

2

3 NEW SECTION. Section 25. Repealer. The following sections of the Montana Code Annotated are

4 repealed:

5 76-3-509. Local option cluster development regulations and exemptions authorized.

6 76-6-102. Intent, findings, and policy.

7

8 NEW SECTION. Section 26. Unfunded mandate laws superseded. The provisions of [this act]

9 expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

10

11 NEW SECTION. Section 27. Codification instruction. (1) [Section 1] is intended to be codified as

12 an integral part of Title 76, chapter 1, part 1, and the provisions of Title 76, chapter 1, part 1, apply to [section

13 1].

14 (2) [Section 2] is intended to be codified as an integral part of Title 76, chapter 1, part 2, and the

15 provisions of Title 76, chapter 1, part 2, apply to [section 2].

16 (3) [Sections 3 and 4] are intended to be codified as an integral part of Title 76, chapter 2, part 2, and

17 the provisions of Title 76, chapter 2, part 2, apply to [sections 3 and 4].

18

19 NEW SECTION. Section 28. Effective date. [This act] is effective on passage and approval.

20

21 NEW SECTION. Section 29. Retroactive applicability. [Section 3] applies retroactively, within the

22 meaning of 1-2-109, to zoning regulations adopted on or after January 1, 2019.

23

- END -